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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,970	11/03/2000	Adrian Elmer Leek	1159.2001-000	5060

21005 7590 06/13/2002

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.  
530 VIRGINIA ROAD  
P.O. BOX 9133  
CONCORD, MA 01742-9133

EXAMINER

FIELDS, IESHA P

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 06/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/705,970	LEEK, ADRIAN ELMER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Iesha P Fields	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other:  |

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### **DETAILED ACTION**

Applicant's amendment received January 16, 2002(Paper No. 4) has been received and entered. Claims 1, 10, and 16 were amended. Claims 1-17 are pending in the instant application.

#### ***Response to Amendment***

The text of those sections of Title 35 U.S. Code not included in this action can be found in a prior Office Action.

#### ***Claim Rejections - 35 USC § 103***

1. Claims 1-17 rejected under 35 U.S.C. 103(a) as being unpatentable over McCormick and Familo et al. further in view of Mehta et al. is being **maintained**.

Applicants have asserted that the claimed invention broadly relates to a staining procedure for biological a specimen that uses a corrosive reagent such as chromic acid. Applicants further assert that the prior art does not teach of a staining protocol that uses a corrosive agent and therefore does not anticipate the claimed invention.

Applicants arguments have been carefully considered but not deemed persuasive.

As stated previously, McCormick and Farmilo et al. disclose a method of histological staining performed by an automated histological staining instrument. The prior art differs from the claimed invention in that it does not teach of a histological

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staining process wherein the process includes Grocott's modification of Gomori's methenamine silver method. However, Mehta et al. teach of a histological staining process wherein the process includes Grocott's modification of Gomori's methenamine silver method. Given that 1) McCormick and Farmilo et al. have taught of a method of histological staining performed by an automated histological staining instrument and that 2) Mehta et al. have taught of a histological staining process wherein the process includes Grocott's modification of Gomori's methenamine silver method it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to use an automated histological staining instrument and incorporate a staining process such as Grocott's modification of Gomori's methenamine silver method. One would have been motivated to use a histological staining process such as Grocott's modification of Gomori's methenamine silver method because such a staining method is commonly used and well known to those skilled in the art.

Regarding the argument that the protocols do not use a corrosive agent such as chromic acid, Mehta et al. clearly teaches of using chromic acid in the staining procedure (See Detailed Description of the Invention; especially pages 5-6).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

For the above reasons, it is believed that the rejections should be sustained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Iesha P Fields whose telephone number is (703) 605-1208. The examiner can normally be reached on 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



**MARK NAVARRO**  
**PRIMARY EXAMINER**

Iesha Fields

June 12, 2002